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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

PVT

Ashley Lazzarini

Plaintiff,

v.

Evans Law Associates, P.C.

Defendant.

Case Number: **CV 10-4681**

Complaint For Damages

Jury Trial Demanded

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

ORIGINAL

1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.

13 3. Ashley Lazzarini, (Plaintiff), through Plaintiff's attorneys, brings this action to
14 challenge the actions of Evans Law Associates, P.C., ("Defendant"), with
15 regard to attempts by Defendant to unlawfully and abusively collect a debt
16 allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
23 were knowing and intentional, and that Defendant did not maintain
24 procedures reasonably adapted to avoid any such violation.

25 JURISDICTION AND VENUE

26 7. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
27 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
28

8. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").

9. Because Defendant does business within the State of California, personal jurisdiction is established.

10. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

11. Plaintiff is a natural person who resides in the city of San Jose, County of Santa Clara, State of California.

12. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.

13. At all times relevant, Defendant conducted business within the State of California.

14. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

15. Defendants are persons who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).

16. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

17. Defendant, in the ordinary course of business, regularly, on behalf of itself, or others, engages in debt collection as that term is defined by California Civil

Code § 1788.2(b), is therefore a debt collectors as that term is defined by California Civil Code § 1788.2(c).

18. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

19. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.

20. At all times relevant, Defendant conducted business within the State of California.

21. Sometime before February 8, 2010, Plaintiff is alleged to have incurred certain financial obligations.

22. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

23. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

24. Sometime thereafter, but before February 8, 2010, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

25. Subsequently, but before February 8, 2010, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.

26. On or about February 8, 2010, Defendant telephoned Plaintiff and demanded payment of the alleged debt.

- 1 27. This communication to Plaintiff was a “communication” as that term is
2 defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent
3 with 15 U.S.C. § 1692g(a).
- 4 28. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)
5 defines that phrase, and an “initial communication” consistent with Cal. Civ.
6 Code § 1812.700(b).
- 7 29. On or about February 8, 2010, during a telephone conversation between
8 Defendant Evans Law Associates, P.C.’s representative, (who identified
9 himself as “Jim Johnson”).
- 10 30. Johnson was at all relevant times, an owner, employee or agent of Defendant
11 Integrity Financial Investigative Services, Inc. acting within the course and
12 scope of his employment or ownership, and there was a causal nexus between
13 Johnson’s acts and his employment or ownership. Consequently, any illegal
14 actions by Johnson were the responsibility of Defendant Evans Law
15 Associates, P.C., vicariously, under the doctrine of Respondeat Superior, or
16 other vicarious liability theories, and Defendant Evans Law Associates, P.C. is
17 liable for those acts.
- 18 31. During the phone conversation with Defendant’s representative on or about
19 February 8, 2010, Plaintiff asked for more information about the alleged debt
20 and about Defendant and attempted to work with Defendant’s representative
21 offering a number of ways to pay for the alleged debt. Defendant’s
22 representative refused to offer information about Defendant or the debt and
23 refused the various methods of payments offered by Plaintiff, including
24 Western Union, Money Gram, or a money order. Defendant’s representative
25 instead demanded a credit card or Plaintiff’s bank information so that
26 Defendant could directly withdraw the funds from Plaintiff’s account.
- 27 32. Plaintiff, uncomfortable with giving this information to someone who refused
28 to verify who they were or what debt they were attempting to collect, refused

1 to give this information to Defendant. When Plaintiff refused, Defendant
2 stated that Defendant could take her car away, or take the money from her car
3 payments if she did not pay the alleged debt.

4 33. Through this conduct, Defendant represented or implied that nonpayment of
5 any debt would result in the arrest or imprisonment of a person or the seizure,
6 garnishment, attachment, or sale of property or wages of a person when such
7 action was not lawful Defendant did not intended to take such action.
8 Consequently, Defendant violated 15 U.S.C. § 1692e(4).

9 34. Additionally, when Defendant became hostile and Plaintiff told Defendant not
10 to call her again, Defendant threatened to “find other ways” adding whether it
11 is by contacting her place of employment or Plaintiff’s references.

12 35. Through this conduct, Defendant threatened to take action that cannot legally
13 be taken or that is not intended to be taken. Consequently, Defendant violated
14 15 U.S.C. § 1692e(5).

15 COUNT I

16 FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

17 15 U.S.C. §§ 1692 ET SEQ.

18 36. Plaintiff repeats, re-alleges, and incorporates by reference, all other
19 paragraphs.

20 37. The foregoing acts and omissions constitute numerous and multiple violations
21 of the FDCPA, including but not limited to each and every one of the above-
22 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

23 38. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
24 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
25 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
26 reasonable attorney’s fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
27 Defendant.
28

COUNT II**ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)****CAL. CIV. CODE §§ 1788-1788.32**

39. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
40. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA, including but not limited to each and every one of the above-cited provisions of the RFDCPA, Cal. Civ. Code §§ 1788-1788.32
41. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF


WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

1 42. Pursuant to the seventh amendment to the Constitution of the United States of
2 America, Plaintiff is entitled to, and demands, a trial by jury.

3 Date: 10/9/10

Hyde & Swigart

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5 By: _____
6 Joshua B. Swigart
7 Attorneys for Plaintiff
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HYDE & SWIGART
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